

**PLANNING AND ZONING COMMISSION
STAFF REPORT**

June 18, 2009



Planning Exception PE 09-04: Nick Philipello Jr.

CASE DESCRIPTION: a request for approval of an exception from the Subdivision Ordinance requirement that water systems serving subdivisions in Bryan's extraterritorial jurisdiction (ETJ) shall meet flow requirements in accordance with the International Fire Code

SIZE AND LOCATION: 5.27 acres of land out of G.H. Coleman Survey, A-10 located north of the intersection of FM 2223, and FM 974 in Brazos County, Texas

EXISTING LAND USE: gas station, retail stores

ZONING: not applicable (ETJ)

APPLICANT(S): Nick Philipello Jr.

AGENT: Garrett Engineering

STAFF CONTACT: Randy Haynes, Staff Planner

SUMMARY RECOMMENDATION: Staff recommends **approving** the requested exception.



BACKGROUND:

The applicant/property owner, Nick Philipello Jr., is proposing to subdivide 5.27 acres he owns north of the intersection of FM 2223 and FM 974 in Bryan's extraterritorial jurisdiction (ETJ)/ Mr. Philipello proposes to subdivide this acreage into two lots so that he may legally transact the sale of a portion of the property. The Subdivision Ordinance requires that water systems serving ETJ subdivisions shall meet flow requirements in accordance with the International Fire Code (Subdivision Ordinance Section 110-79).

The Wickson Creek Special Utility District is a political subdivision of the State of Texas. The District supplies water to an area of approximately 500 square miles in portions of Brazos, Grimes, and Robertson Counties. The Wickson Creek water system provides service to the subject tract but the utility district's infrastructure does not currently have capacity to provide enough water to meet the fire flow requirements of the International Fire Code at this location. Expansion of the system by the utility district is planned, but likely will not occur for a number of years. To complete the planned subdivision of this property without the first extending the infrastructure to provide appropriate fire flow, Mr. Philipello is requesting exception the fire flow requirement.

RELATION TO BRYAN'S COMPREHENSIVE PLAN:

Both the following examples from the Comprehensive Plan illustrate the intent to provide for orderly growth. In this case staff contends that the area of the subject property may not be one where more intense growth should be encouraged at this time. Extension of infrastructure to meet fire flow capacity would serve to support further development in this area. Staff is of the opinion that expanding the capacity for growth in this area of the ETJ is premature and would encourage sprawl. Staff further finds that the impact of sprawling development on the resources of the City of Bryan is contrary to the interests of its citizens.

Chapter 5 – Land Use

5.4 Land Use Issues: *The following issues related to land use were identified by the Comprehensive Plan Advisory Committee (CPAC) and the public:*

Annexation – Cities expand their corporate limits periodically to manage land development in new growth corridors, ensure orderly extension of infrastructure and expand their tax bases. Realizing the need for Bryan to grow in a planned and logical fashion, residents commented on the need for an annexation plan for the City. Bryan's extraterritorial jurisdiction (ETJ) has seen unprecedented rural development in recent years. Many thought the City should study the impacts of this development on Bryan and factor them into a plan for future annexations.

Chapter 10 – Utilities

10.1.6 Goals, Objectives and Action Statements: *The following goals, objectives and action statements concerning water were developed during this Comprehensive Plan Update.*

Objective D: Support developed areas and planned growth by funding infrastructure improvements.

Action Statement 1: The City of Bryan should coordinate with all CCN holders within their city limits & ETJ to ensure they can meet the demands of the updated plan. Options should be explored to provide ultimate fire flow services and encourage improvements.

ANALYSIS:

The Planning and Zoning Commission may authorize exceptions from standards of the Subdivision Ordinance when, in its opinion, compliance would not be in the public interest. In granting an exception, the Planning and Zoning Commission shall prescribe only conditions that it deems necessary or desirable in the public interest.

In making its findings, the Planning and Zoning Commission shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such exception upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity.

No exception shall be granted unless the Planning and Zoning Commission finds:

1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the standards would deprive the applicant of the reasonable use of the land.

The applicant states that the subject property is already developed and occupied by a commercial business and the proposed final plat will not trigger further development. Staff agrees that the act of final platting will not likely result in increased intensity of use. In this case the special circumstance is comprised of two basic findings. First, the land is located a significant distance from water infrastructure that can provide the required fire flow. Second, the subject property is substantially developed and no significant increase of use intensity is likely to occur. Given these two circumstances taken together, staff maintains that in this case, strict compliance with the subdivision regulations would deprive the applicant of the ability to sell a portion of his land.

2. That the exception is necessary for the preservation and enjoyment of the property.

To legally transact the sale of a portion of this property, the applicant must prepare and record a final plat. Although the property is already physically developed and in reasonable use, the ability to transact its sale is necessary for the owner's enjoyment. Given the special circumstances that apply in this case, staff contends that strict compliance with the subdivision regulations would prevent the property owners from reasonable enjoyment of their property rights.

3. That the granting of the exception will not be detrimental to the public health, safety, or welfare, or injurious to other property in the area

The Fire Marshall of the City of Bryan has been consulted and finds that the requested exception is reasonable and will not negatively impact public safety. Having considered the existing conditions and the finding of the Fire Marshall, the staff contends that granting the exception will not be detrimental to public health, safety, or welfare.

4. That the granting of the exception will not have the effect of preventing the orderly subdivision of adjoining land in the vicinity in accordance with the provisions of this Ordinance.

Granting the exception would not detrimentally affect the orderly subdivision of land in the vicinity of the subject tract.

RECOMMENDATION:

Staff has been able to make affirmative findings regarding all four above-mentioned criteria, as required by the Subdivision Ordinance for approval of an exception to subdivision design standards. Staff therefore recommends **approving** the request.

EXCERPT FROM APPLICANTS' EXCEPTION APPLICATION:

The following page should be completed for all variance requests EXCEPT setback variances. Please proceed to the next page if this request is for a setback variance.

Please describe the type of variance being requested:

We are requesting a variance to forgo instillation of a Fire Hydrant.

Are there special circumstances or conditions affecting the land involved such that the strict application of the ordinance would deprive you reasonable use of the land:

Yes, there are special circumstances affecting the land in that strict application would deprive reasonable use of the land. The existing 4" water line provided by Wixon Creek Utility is not adequate to support a fire hydrant. The nearest fire hydrant belongs to the City of Bryan and is located 2,340.21 feet away.

Is the variance necessary for the preservation and enjoyment of substantial property rights:

Yes. The variance is necessary for the preservation and enjoyment of substantial property rights. We have been in business for 10 years and have had no incident with fire. This variance will allow us to make the minor changes to lot structure and continue serving the ETJ community.

State how the granting of the variance would not be detrimental to the public health, safety, or welfare or injurious to other property in the area:

The variance would not be detrimental to the public health, safety, or welfare or other property because the store has installed an Automatic Chemical Sprinkler System at the two cooking stations; these are regulated by the state. The property also has fire extinguishers and a shut off for gas pumps. The nearest fire station is approximately 9 min. away and the adjoining property is owned by the applicant. No surrounding property will be affected in case a fire does occur.

State how this variance will not effect the orderly development of the subject property and/or land in the vicinity in accordance with City of Bryan Ordinances:

The variance will not effect the orderly development of the subject property and/or land in the vicinity because the property is located in the (ETJ) and no other development is taking place here. The City of Bryans infrastructure ends approximately 2,340.21 feet away so granting the variance will not affect the orderly development.